

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

14-CA-292528

Date Filed

March 18, 2022

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Midwest Division - RMC, LLC, d/b/a Research Medical Center		b. Tel. No. (816) 276-4000
		c. Cell No.
		f. Fax No. (816) 276-4387
d. Address (Street, city, state, and ZIP code) 2316 E. Meyer Blvd Kansas City, MO 64132	e. Employer Representative Ashley McClellan, CEO	
	g. e-Mail	
	h. Number of workers employed 2,200+	
i. Type of Establishment (factory, mine, wholesaler, etc.) Hospital	j. Identify principal product or service Health Care Services	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months, the above-named Employer, by its officers, agents, and representatives has violated the Act by, inter alia, disciplining (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) union and other protected activities and by refusing to provide information relevant and necessary to process grievances on behalf of Nurse (b) (6), (b) (7)(C). By these and other acts, the Employer has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

NNOC-Missouri & Kansas/NNU

4a. Address (Street and number, city, state, and ZIP code) 155 Grand Avenue Oakland, CA 94612	4b. Tel. No. 510-273-2200
	4c. Cell No.
	4d. Fax No. 510-663-4822
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

(signature of representative or person making charge)

Anthony J. Tucci, Legal Counsel

(Print/type name and title or office, if any)

Address

155 Grand Avenue, Oakland, CA 94612

03/18/2022

(date)

Tel. No.

510-326-6832

Office, if any, Cell No.

Fax No.

510-663-4822

e-Mail

atucci@calnurses.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Case Name: Midwest Division - RMC, LLC, d/b/a Research Medical Center
Case No.: 14-CA-292528
Agent: Field Attorney REBECCA PROCTOR

CASEHANDLING LOG

[illegible]



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 17
8600 Farley St Ste 100
Overland Park, KS 66212-4677

Agency Website: www.nlrb.gov
Telephone: (913)967-3000
Fax: (913)967-3010



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March 21, 2022

Ashley McClellan, CEO
Midwest Division - RMC, LLC
2316 E Meyer Blvd
Kansas City, MO 64132-1136

Re: Midwest Division - RMC, LLC, d/b/a
Research Medical Center
Case 14-CA-292528

Dear Ms. McClellan:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney REBECCA PROCTOR whose telephone number is (913)275-6523. If this Board agent is not available, you may contact Supervisory Attorney LUCINDA L. FLYNN whose telephone number is (314)449-7482.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not

have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



ANDREA J. WILKES
Regional Director

AJW:kec

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 14-CA-292528
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).**

7A. PRINCIPAL LOCATION:	7B. BRANCH LOCATIONS:
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8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:	B. AT THE ADDRESS INVOLVED IN THIS MATTER:
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9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**MIDWEST DIVISION - RMC, LLC, D/B/A
RESEARCH MEDICAL CENTER**

Charged Party

and

**NATIONAL NURSES ORGANIZING
COMMITTEE-MISSOURI &
KANSAS/NATIONAL NURSES UNITED (NNOC-
MO/NU)**

Charging Party

Case 14-CA-292528

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 21, 2022, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Ashley McClellan, CEO
Midwest Division - RMC, LLC
2316 E Meyer Blvd
Kansas City, MO 64132-1136

March 21, 2022

Date

Karen Clemoens, Designated Agent of NLRB

Name

/s/ Karen Clemoens

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 17
8600 Farley St Ste 100
Overland Park, KS 66212-4677

Agency Website: www.nlrb.gov
Telephone: (913)967-3000
Fax: (913)967-3010



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CORRECTED

March 22, 2022

Anthony J. Tucci, Legal Counsel
National Nurses Organizing Committee-
Missouri & Kansas/National Nurses United
(NNOC-MO/NNU)
155 Grand Ave
Oakland, CA 94612

Re: Midwest Division - RMC, LLC, d/b/a
Research Medical Center
Case 14-CA-292528

Dear Mr. Tucci:

The charge that you filed in this case on **March 18, 2022** has been docketed as case number 14-CA-292528. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney REBECCA PROCTOR whose telephone number is (913)275-6523. If this Board agent is not available, you may contact Supervisory Attorney LUCINDA L. FLYNN whose telephone number is (314)449-7482.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession.

Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB

March 22, 2022

office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrea J. Wilkes", written in a cursive style.

ANDREA J. WILKES
Regional Director

AJW:kec
Enclosure

From: [Proctor, Rebecca](#)
To: [Anthony Tucci](#)
Subject: Affidavits for Signature
Date:
Attachments: (b) (6), (b) (7)(C), (b) (7)(D)

Dear Mr. Tucci:

Attached are your clients' statements.

Please have your clients review these affidavits for accuracy. I request that your clients initial any changes that they make (including cross-outs and additions). Please also have them initial the bottom of each page of their statements to indicate they have read that page, and sign and date the last page.

Upon completion of the foregoing, please promptly return the signed affidavits to me by April 1, 2022. You should return it by using the NLRB's E-Filing feature at www.nlrb.gov. Please also submit any supporting documentation which you may have, if applicable.

If your clients are not able to sign the documents or if you are unable to e-file the signed affidavits, please email the document to me at rebecca.proctor@nlrb.gov and state in your email why you are unable to e-file the affidavit:

And, if you are unable to return a signed version of the affidavit, include the additional following statements in your email:

1. That your clients swear or affirm that the contents of the affidavit are true.
2. If the contents of the affidavit are not true, set forth the corrections, in detail, in your email.

Thank you very much for your anticipated cooperation. If you have any questions concerning this letter, please contact me at (913)275-6523.

Very truly yours,

Rebecca

REBECCA PROCTOR
Field Attorney
National Labor Relations Board | Subregion 17
8600 Farley St., Suite 100
Overland Park, KS 66212
Phone: (913)275-6523
Fax: (913)967-3010
Rebecca.Proctor@nlrb.gov



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 17
8600 Farley St Ste 100
Overland Park, KS 66212-4677

Agency Website: www.nlrb.gov
Telephone: (913)967-3000
Fax: (913)967-3010

Agent's Direct Dial: (913)275-6523

March 28, 2022

Thomas H. Keim, Jr.
FordHarrison, LLP
100 Dunbar Street, Suite 300
Spartanburg, SC 29306

Re: Midwest Division - RMC, LLC, d/b/a
Research Medical Center
Case 14-CA-292528

Dear Mr. Keim:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits as soon as possible with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

That Midwest Division – RMC, LLC, d/b/a Research Medical Center (Employer) discharged (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) union and other protected, concerted activities and to discourage union and other protected, concerted activities in violation of Sections 8(a)(1) and 8(a)(3) of the Act;

That Employer has failed and refused to provide requested, relevant information to National Nurses Organizing Committee—Missouri & Kansas NNU related to the grievance discharge of (b) (6), (b) (7)(C).

Board Affidavits: I am requesting to take affidavits from (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and any other individuals you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me as soon as possible to schedule these affidavits.

Documents: Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

1. Please provide Employer's position regarding whether it discharged (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) union and other protected, concerted activities

and to discourage union and other protected, concerted activities in violation of Sections 8(a)(1) and 8(a)(3) of the Act. If Employer's position is that (b) (6), (b) (7)(C) [REDACTED] was discharged for reasons other than retaliation for union and other protected, concerted activities, please provide the reason for discharge, any CBA language or Employer policy related to the reason for discharge, and any other documents used in making the decision to discharge or supporting the decision to discharge.

2. Please provide a copy of (b) (6), (b) (7)(C) [REDACTED] personnel file.
3. If not already provided in response to the above, please provide all Employer policies and any and all other Employer documents related to nurse continuing education, including but not limited to, policies explaining how continuing education assignments are made via HealthStream, how employees are notified of continuing education assigned through HealthStream, and penalties for untimely completion of assigned programs.
4. If not already provided in response to the above, please provide any and all correspondence between Employer supervisors, managers, and/or agents discussing the decision to discipline/discharge Nurse (b) (6), (b) (7)(C) [REDACTED].
5. Please provide a list of all nurses completing one or more continuing education program after the due date during the last five years. For each nurse, list each continuing education program that was completed after the due date, the date the continuing education was due, the number of days after the due date the continuing education was completed, whether any discipline was issued, and what level of discipline was issued.
6. Please provide copies of all disciplinary actions referenced in #4 above.
7. Please provide an explanation of how, if at all, CE procedures were modified during the COVID 19 pandemic.
8. Please provide a copy of any grievances and Employer responses filed regarding Nurse (b) (6), (b) (7)(C) [REDACTED] discharge and indicate the current status in the grievance procedure of each grievance.
9. Please provide a copy of the current CBA.
10. Please provide Employer's position regarding whether in September 2021, nurses on the Progressive Care Unit were told not to discuss the OSHA Emergency Temporary Standard about the mixing of COVID and non-COVID patients on the unit and/or the actual mixing of COVID and non-COVID patients on the unit.

11. Please provide Employer's position regarding whether in September 2021 after a discussion on a PCU/ICU unit GroupME about the incentive difference between the units nurses were told they needed to "mind their manners" on the GroupMe. Please also provide Employer's position regarding whether in the September 2021 GroupMe conversation about the incentive difference the (b) (6), (b) (7)(C) stated the issue was one that should be addressed privately.
12. Please provide Employer's position regarding whether it provided the information requested by (b) (6), (b) (7)(C) of the Union in its October 11, 2021 information request related to the grievance filed over Nurse (b) (6), (b) (7)(C) discharge. If Employer's position is that it fully responded to the request, please provide a copy of all information provided in response to the request. If there is information that was not provided on the basis of relevancy, please explain why the information was not relevant. If there is information that was not provided on the basis of any privilege, please state the claimed privilege and describe the documents to which Employer claims privilege applies. If Employer's position is that it did not fully respond to the request, but that the lack of a complete response does not violate Section 8(a)(5) of the Act, your position should explain why the Act was not violated.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by Monday, April 4, 2022. If you are willing to allow me to take affidavits, please contact me as soon as possible to schedule a time to take affidavits. Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted.

Please contact me at your earliest convenience by telephone, (913)275-6523, or e-mail, rebecca.proctor@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

/s/ Rebecca Proctor

REBECCA PROCTOR
Field Attorney

From: [Proctor, Rebecca](#)
To: tkeim@fordharrison.com
Subject: 14-CA-292528 Midwest Division - RMC, LLC, d/b/a/ Research Medical Center
Date: Monday, March 28, 2022 11:55:00 AM

Good Morning Mr. Keim:

On March 18, 2022, the NNOC filed the above referenced charge against Research Medical Center alleging an unlawful failure to provide relevant requested information and the retaliatory discharge of (b) (6), (b) (7)(C) . To date, no notice of appearance has been filed. Please advise whether you will be providing representation in this case. As there is a pending hearing involving these same parties, the investigation of this charge is being expedited so any meritorious allegations can be included in that hearing.

Thank you-

Rebecca

REBECCA PROCTOR
Field Attorney
National Labor Relations Board | Subregion 17
8600 Farley St., Suite 100
Overland Park, KS 66212
Phone: (913)275-6523
Fax: (913)967-3010
Rebecca.Proctor@nrlrb.gov

From: [Proctor, Rebecca](#)
To: [Tom Keim](#)
Subject: RE: 14-CA-292528 Midwest Division - RMC, LLC, d/b/a/ Research Medical Center
Date: Monday, March 28, 2022 4:05:00 PM
Attachments: [~WRD0000.jpg](#)
[CHG.14-CA-292528.Signed Charge Against Employer.pdf](#)
[Research--3-28-22 Request for Evidence.pdf](#)

Good Afternoon Tom:

Thank you for the prompt response. The Charge and a request for evidence are attached. Please note that as this is an expedited investigation, the Hospital's response is due next Monday, April 4, 2022.

Please let me know if you have any questions or if you would like to discuss either the charge or the request.

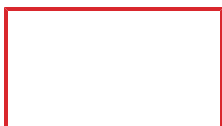
Thank you-

Rebecca

REBECCA PROCTOR
Field Attorney
National Labor Relations Board | Subregion 17
8600 Farley St., Suite 100
Overland Park, KS 66212
Phone: (913)275-6523
Fax: (913)967-3010
Rebecca.Proctor@nrlrb.gov


From: Tom Keim <tkeim@fordharrison.com>
Sent: Monday, March 28, 2022 1:57 PM
To: Proctor, Rebecca <Rebecca.Proctor@nrlrb.gov>
Subject: RE: 14-CA-292528 Midwest Division - RMC, LLC, d/b/a/ Research Medical Center

Rebecca,
I will be handling the Charge. Please send me a copy of the Charge and RFE.
Thanks,
Tom



Thomas H. Keim, Jr. - Attorney at Law 
Certified Specialist, Employment and Labor Law



FordHarrison LLP - Ius Laboris USA | Global HR Lawyers 
100 Dunbar Street, Suite 300 | Spartanburg, SC 29306
tkeim@fordharrison.com | P: 864-699-1129

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From: Tom Keim

Sent: Monday, March 28, 2022 1:35 PM


To: 'Proctor, Rebecca' <Rebecca.Proctor@nrlb.gov>

Subject: RE: 14-CA-292528 Midwest Division - RMC, LLC, d/b/a/ Research Medical Center

Rebecca,
I'm checking on this Charge now.
Thanks,
Tom



Thomas H. Keim, Jr. - Attorney at Law 
Certified Specialist, Employment and Labor Law

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From: Proctor, Rebecca [<mailto:Rebecca.Proctor@nrlb.gov>]

Sent: Monday, March 28, 2022 11:56 AM

To: Tom Keim <tkeim@fordharrison.com>

Subject: 14-CA-292528 Midwest Division - RMC, LLC, d/b/a/ Research Medical Center

Good Morning Mr. Keim:

On March 18, 2022, the NNOC filed the above referenced charge against Research Medical Center alleging an unlawful failure to provide relevant requested information and the retaliatory discharge of (b) (6), (b) (7)(C) . To date, no notice of appearance has been filed. Please advise whether you will be providing representation in this case. As there is a pending hearing involving these same parties, the investigation of this charge is being expedited so any meritorious allegations can be included in that hearing.

Thank you-

Rebecca

REBECCA PROCTOR

Field Attorney

National Labor Relations Board | Subregion 17

8600 Farley St., Suite 100

Overland Park, KS 66212

Phone: (913)275-6523

Fax: (913)967-3010

Rebecca.Proctor@nrlrb.gov

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From: (b) (6), (b) (7)(C)
To: [Proctor, Rebecca](#)
Cc: tkeim@fordharrison.com
Subject: Employer's Statement of Position 14-CA-292528
Date: Monday, April 4, 2022 4:53:53 PM
Attachments: [Employer's Statement of Position.pdf](#)
[14-CA-292528 - Attachments A-J.pdf](#)
[ShipImage.JPG](#)


Ms. Proctor,

On behalf of Tom Keim, please find attached the Employer's Statement of Position for filing in the above-referenced matter. Please note, we were not able to e-file these documents in the NLRB Portal as the Charge number is not being recognized in the system. I have attached a screenshot with the error message for your reference. Thank you.

Kind Regards,



(b) (6), (b) (7)(C)

FordHarrison LLP - Ius Laboris USA | Global HR Lawyers 
100 Dunbar Street, Suite 300 | Spartanburg, SC 29306
(b) (6), (b) (7)(C) @fordharrison.com | P: (b) (6), (b) (7)(C)

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14-CA-292528

Sample Case Number: 01-CA-000000; Inquiry Number: 1-1234567890

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Contact Information

Thomas H. Keim,
FordHarrison LLP - 100 Dunbar
Street, Suite 300, Spartanburg, SC
29306

Ph: (864) 699-1100

Additional Phone: (864) 237-1911

E-mail: tkeim@fordharrison.com

Additional E-mail:

(b) (6), (b) (7)(C)

From: Julie Perry <jperry@nationalnursesunited.org>

Sent: Tuesday, February 22, 2022 3:58 PM

To: (b) (6), (b) (7)(C) @hcamidwest.com; (b) (6), (b) (7)(C) @HCAHealthcare.com>

Cc: (b) (6), (b) (7)(C); (b) (6), (b) (7)(C)

Subject: Fw: (b) (6), (b) (7)(C) RFI Response

(b) (6), (b) (7)(C) & (b) (6), (b) (7)(C) - Soon we may have arbitration dates. Please note, the Union continues to request the information regarding the termination of (b) (6), (b) (7)(C). Below I have listed the dates we have made the requests. The Hospital has only partially responded, and the Union continues to request the remaining information.

- today
- 12/14
- 12/11
- 11/16
- 11/10
- 11/1
- 10/20
- 10/10
-

For the Union,

Julie Perry, RN
NNOC/NNU
Nat'l Labor Representative
816-665-4746 *mobile*
nationalnursesunited.org

From: Julie Perry <jperry@nationalnursesunited.org>

Sent: Tuesday, December 14, 2021 9:19 AM

To: (b) (6), (b) (7)(C) @HCAHealthcare.com>

Subject: Fwd: (b) (6), (b) (7)(C) RFI Response

There is no merit to this argument and w/ holding of the Union's information request to investigate this discipline grievance. The employer is required to provide these documents. Just cause applies hospital wide, not to a single department or only like departments.

From: (b) (6), (b) (7)(C) @HCAHealthcare.com>

Sent: Monday, December 13, 2021 8:22 PM

To: Julie Perry

Subject: Re: (b) (6), (b) (7)(C) RFI Response

Julie,

Your information requests regarding other departments are irrelevant because the rules and policies at issue are enforced on a department by department basis with department management exercising discretion in making the critical decisions on how and when such rules and policies are enforced. As you likely recall from the (b) (6), (b) (7)(C) arbitration, precedent and the extent to which rules and policies are enforced consistently can only be assessed by using an intra-department measure.

Given your email below, Wednesday's meeting appears premature. We can discuss revisiting such a meeting later on.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) | (b) (6), (b) (7)(C) HCA Human Resources Group | Mobile: (b) (6), (b) (7)(C) |
(b) (6), (b) (7)(C) @HCAHealthcare.com |

From: Julie Perry <jperry@nationalnursesunited.org>

Sent: Saturday, December 11, 2021 1:12 PM

To: (b) (6), (b) (7)(C) @HCAHealthcare.com>

Subject: {EXTERNAL} Fw: (b) (6), (b) (7)(C) RFI Response

CAUTION! This email originated from outside of our organization. **DO NOT CLICK** links or open attachments unless you recognize the sender and know the content is safe.

This is received, we will review it.

This response is an evasion of the obligation to provide the information requested and we will pursue this further. We continue to request all information you have not provided. The union's initial information request was Oct 11, 2021.

I'm confident you are fully aware; it is not for the hospital to determine relevancy for the Union's investigation or to narrow it as you choose. The policy is a hospital wide policy, we request you do not narrow our requests to a unit you choose to make the shoe fit.

It appears no nurse was discipline until after management retaliated against (b) (6), (b) (7)(C), who was retaliated against w/in a short period after (b) (6), (b) (7)(C) was acting in (b) (6), (b) (7)(C) role.

We request documentation of when the disciplines of other nurses you attached, were given to them. Only one was signed by a manager. We request to know what specific education they were disciplined regarding, and we request this for both the disciplines attached in the list in the attached memo, and for the nurse's disciplines attached in addition to the memo and likewise for the disciplines you have yet to provide us.

Please provide as the information is gathered. We request this ASAP or in one week.

Julie Perry, RN
NNOC/NNU
Nat'l Labor Representative
816-665-4746 *mobile*
nationalnursesunited.org

From: (b) (6), (b) (7)(C) <[REDACTED]@HCAHealthcare.com>
Sent: Friday, December 10, 2021 8:24 PM
To: Julie Perry <jperry@nationalnursesunited.org>
Subject: (b) (6), (b) (7)(C) RFI Response

Julie,

I apologize for not getting to your emails from Wednesday so far – I have been run ragged by some pop-up issues in the back end of the week, including some friends from OSHA, and, this evening, (b) (6), (b) (7)(C). I will respond to those emails over the weekend. That said, I promised you this by the end of the week, so I prioritized getting it to you.

Please see the attached documents, which, along with the documents previously supplied, constitute the Hospital's responses and objections to your RFI regarding the termination of (b) (6), (b) (7)(C). You've previously indicated to me that you were concerned about your ability to review these documents and be properly prepared for our upcoming meeting. If you continue to have this concern, the Hospital is happy to re-schedule the meeting after the Holidays. Given that we are outside the scope of the CBA on this meeting (as we have previously discussed, timelines have passed) and the arbitration has yet to be scheduled, the Hospital is happy to be flexible on scheduling.

Have a lovely weekend.

Best,

(b) (6), (b) (7)(C)
[REDACTED]

(b) (6), (b) (7)(C) | HCA Human Resources Group | Mobile: (b) (6), (b) (7)(C) |
(b) (6), (b) (7)(C) <[\[REDACTED\]@HCAHealthcare.com](mailto:[REDACTED]@HCAHealthcare.com)> |

From: Julie Perry <jperry@nationalnursesunited.org>

Sent: Friday, December 3, 2021 7:03 PM

To: (b) (6), (b) (7)(C) @HCAHealthcare.com>; (b) (6), (b) (7)(C) @HCAHealthcare.com>

Cc: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Subject: Re: Meeting

*See correction below in yellow highlight. Thank you.

From: Julie Perry <jperry@nationalnursesunited.org>

Sent: Friday, December 3, 2021 6:57 PM

To: (b) (6), (b) (7)(C) @HCAHealthcare.com>; (b) (6), (b) (7)(C) @HCAHealthcare.com>

Cc: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Subject: Re: Meeting

(b) (6), (b) (7)(C) - Please confirm if our meeting is 12/15 or 16. I thought 12/15?

My previous email to you details the history of our RFI. Regarding your reference to a "final version" in your email below, the Union's RFI has remained the same, except for lengthening the timeframe for information thru Oct 1, 2021, to be thru the month of **October 31, 2021**. We added 30 days and have consistently requested for the information to be sent as it is gathered. Further, I want to draw attention to the fact we narrowed our request from the onset. Instead of asking for the information for the entire hospital(all nursing units), we narrowed it to a smaller grouping of units in the interest of facilitating getting the information faster.

Please note, we continue to reserve the right to request additional information and have learned of more units, outside of the units we have requested information from, where this rule is likewise enforced differently or not at all. It seems this rule for nurses is like dancing on a flying carpet vs enforcement as per just cause.

We will look for the information we have requested next week while simultaneously working to schedule this hearing, because (b) (6), (b) (7)(C) job was lost, and pay was lost. We remain open to a resolution settlement which includes putting (b) (6), (b) (7)(C) back to work and we urge the hospital to consider it.

You state that when you get the information to us next week it gives us, "*ample time to review it and prepare for our meeting*". How do you know this?

We will look for your response.

Julie Perry, RN
NNOC/NNU
Nat'l Labor Representative
816-665-4746 *mobile*
nationalnursesunited.org

From: (b) (6), (b) (7)(C) @HCAHealthcare.com>
Sent: Thursday, December 2, 2021 7:15 AM
To: Julie Perry <jperry@nationalnursesunited.org>; (b) (6), (b) (7)(C) @HCAHealthcare.com>
Cc: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
Subject: Re:Meeting

Julie,

We only received your final version of the information request approximately two weeks ago, and there was an intervening holiday. We are meeting in two weeks and the arbitration is not scheduled. Additionally, we have provided relevant information already and more will be forthcoming next week, giving you ample time to review and prepare for our meeting. I'd appreciate it if you would be willing to wait and see what you receive before burdening us both with the additional work involved with a board charge. The Hospital had every intention of responding with relevant information by next week.

We will look forward to meeting via Zoom on the 16th. If the meeting is productive but not long enough, we can discuss a second meeting after the fact.

Best,

(b) (6), (b) (7)(C)

From: Julie Perry <jperry@nationalnursesunited.org>
Sent: Wednesday, December 1, 2021 4:24:54 PM
To: (b) (6), (b) (7)(C) @HCAHealthcare.com>; (b) (6), (b) (7)(C) @HCAHealthcare.com>
Cc: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) >
Subject: {EXTERNAL} Re: Meeting

CAUTION! This email originated from outside of our organization. **DO NOT CLICK** links or open attachments unless you recognize the sender and know the content is safe.

Hi (b) (6), (b) (7)(C) - We will plan on 1030am, via Zoom. I really doubt 30 minutes will be enough time, I'm guessing you anticipated we would think this. We will meet in the interest of getting (b) (6), (b) (7)(C) back to work at RMC.

As you know, we are now past the step 2 and at the point where we have received our 2nd arbitration panel and we have asked to schedule the coin toss with HR to strike the panel. Also, we have not been provided the needed information requested and are about to file board charges for it. It's concerning.

For the Union,

Julie Perry, RN
NNOC/NNU
Nat'l Labor Representative
816-665-4746 *mobile*
nationalnursesunited.org

From: (b) (6), (b) (7)(C) @HCAHealthcare.com>
Sent: Tuesday, November 30, 2021 7:41 PM
To: Julie Perry <jperry@nationalnursesunited.org>
Cc: (b) (6), (b) (7)(C) @HCAHealthcare.com>
Subject: Meeting

Julie,

Hello again. We have availability on December 15th between 10 and 1 if there is a 30 minute window in there for us to meet to discuss (b) (6), (b) (7)(C) termination. If your availability has changed, please so kindly advise.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) | (b) (6), (b) (7)(C) | HCA Human Resources Group | Mobile: (b) (6), (b) (7)(C) |
(b) (6), (b) (7)(C) @HCAHealthcare.com |



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Committee**

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OAKLAND

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phone: 800-287-5021

fax: 510-663-1625

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

II. LEGAL ARGUMENT

A. The Employer Unlawfully Discriminated Against (b) (6), (b) (7)(C) Because of (b) (6), (b) (7)(C) Union and Other Protect Activities

The Employer unlawfully discriminated against Nurse (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) union and other protected activities under the *Wright Line* standard.² 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel may meet its initial burden by showing that: (1) the employee engaged in union or other protected activity, (2) the employer knew of such activities, and (3) the employer harbored animosity towards the union or other protected activity, and there was a causal connection between the discipline and the protected activity. *General Motors LLC*, 369 NLRB No. 127, slip op. at 10 (2020); *Camaco Lorain Mfg. Plant*, 356 NLRB at 1184-1185; *ADB Utility Contractors*, 353 NLRB 166, 166-167 (2008), enf. denied on other grounds, 383 F. App'x 594 (8th Cir. 2010); *Intermet Stevensville*, 350 NLRB 1270, 1274-1275 (2007); *Senior Citizens Coordinating Council*, 330 NLRB 1100, 1105 (2000).

1. In 2021, (b) (6), (b) (7)(C) Became a (b) (6), (b) (7)(C) of the Union, Engaging in Union and Other Protected Activities

While Nurse (b) (6), (b) (7)(C) had been a (b) (6), (b) (7)(C) since (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) only became a (b) (6), (b) (7)(C) for NNU, and a target of the Employer, starting in 2021. Particularly, (b) (6), (b) (7)(C)

In March 2020, Nurse (b) (6), (b) (7)(C), along with other nurses delivered a petition complaining about unsafe working conditions and the lack of protection for nurses from Covid-19. This letter was a part of a complaint that the Union filed with OSHA against the Employer. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 5-6.

In March 2021, Nurse (b) (6), (b) (7)(C)

Not only was Nurse (b) (6), (b) (7)(C) the only nurse from (b) (6), (b) (7)(C) bargaining unit (b) (6), (b) (7)(C), Nurse (b) (6), (b) (7)(C) was the only witness for NNU of its

² GC Memo 21-04 requires mandatory submission to advice on certain questions involving *Wright Line* related to the heightened animus requirement under *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 (2019) (overruling *Mesker Door*, 357 NLRB 591 (2011) and *Libertyville Toyota*, 360 NLRB 1298 (2014) and cases involving the applicability of *Electrolux Home Products*, 368 NLRB No. 34 (2019) (de-emphasizing the significance of pretext in furtherance of satisfying the General Counsel's burden under *Wright Line*, and distinguishing *El Paso Electric Co.*, 355 NLRB 428 n. 3 (2010) and *Whitesville Mill Service Co.*, 307 NLRB 937 (1992) (where pretext was relied upon to satisfy the General Counsel's burden of proof)). GC Memo 21-04 at 3.

170,000 members. (b) (6), (b) (7)(C) detailed (b) (6), (b) (7)(C) experience dealing with Covid-19 as a nurse at RMC, explaining that RMC rationed PPE, which created an unsafe working environment that led to the death of (b) (6), (b) (7)(C) colleague and (b) (6), (b) (7)(C) own illness of Covid-19.

Nurse (b) (6), (b) (7)(C) did media interviews related to (b) (6), (b) (7)(C) testimony (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).

Nurse (b) (6), (b) (7)(C) was also heavily involved in the 2021 contract negotiations, engaging in informational pickets and gathering strike pledges from (b) (6), (b) (7)(C) colleagues.

In (b) (6), (b) (7)(C) Nurse (b) (6), (b) (7)(C) also for the first time started representing workers in resolving grievances. For instance, (b) (6), (b) (7)(C) was involved in some pre-grievance meetings in (b) (6), (b) (7)(C) with the (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) also represented a co-worker in early September 2021 regarding finding coverage for a colleague who could not work on Labor Day. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 7.

On September 12, 2021, (b) (6), (b) (7)(C) raised concerns about pay on a GroupMe, which includes (b) (6), (b) (7)(C) unit and managers. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 8.

On September 24, 2021, (b) (6), (b) (7)(C) complained to management about the mixing of Covid and non-Covid patients in relation to OSHA's Emergency Temporary Standard to protect healthcare workers. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 7. Nurse (b) (6), (b) (7)(C) raised these concerns pursuant to a questionnaire from (b) (6), (b) (7)(C) Union and on behalf of colleagues. This was also a logical outgrowth from the earlier complaints that Nurse (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) colleagues had made to management related to the unsafe working conditions Covid-19 presented.

2. The Employer Knew of Such Activities

The Employer was well aware of Nurse (b) (6), (b) (7)(C) Union and other protected activities.

Nurse (b) (6), (b) (7)(C) petitioned (b) (6), (b) (7)(C) managers related to the unsafe working conditions during Covid-19 and the lack of protective equipment. This was a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) Additionally, (b) (6), (b) (7)(C), (b) (7)(D) forwarded the testimony in an email to the entire bargaining unit, which management monitors. (b) (6), (b) (7)(C) Aff. 2.

As for the remainder of the union and other protected activities, Nurse (b) (6), (b) (7)(C) raised concerns regarding informal grievances, pay disparities, and unsafe working conditions directly to management.

3. The Employer Discharged (b) (6), (b) (7)(C) Because of (b) (6), (b) (7)(C) Union and Other Protected Activities

i. Temporal Proximity

The Board has long held that “where adverse action occurs shortly after an employee has engaged in protected activity, an inference of unlawful motive is raised.” *Sprain Brook Manor Nursing Home*, 359 NLRB No. 105 (Apr. 26, 2013) (citing *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1122 (2002)). When the temporal proximity of union activity and discharge are close, “Timing alone may be sufficient to establish that antiunion animus was a motivating factor in a discharge decision.” *Trader Horn of New Jersey, Inc.*, 316 NLRB 194, 198 (1995) (quoting *Sawyer of NAPA*, 300 NLRB 131, 150 (1990)).

In the present matter, Nurse (b) (6), (b) (7)(C) engaged in union and other protected activities on September 24 by raising concerns about the mixing of Covid and non-Covid patients. Just four days later on September 28, management contacted Nurse (b) (6), (b) (7)(C) to schedule the meeting where the Employer would fire (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (7)(D) Aff. 4. This was also on the heels of Nurse (b) (6), (b) (7)(C) raising a pay dispute on behalf of (b) (6), (b) (7)(C) colleagues in the PCU on (b) (6), (b) (7)(C). (b) (6), (b) (7)(C), (b) (7)(D) Aff. 8.

The Employer only decided to “investigate” the matter that led to Nurse (b) (6), (b) (7)(C) termination shortly after (b) (6), (b) (7)(C) had engaged in union activities in representing (b) (6), (b) (7)(C) colleague. In early September, Nurse (b) (6), (b) (7)(C) assisted (b) (6), (b) (7)(C) colleague (b) (6), (b) (7)(C) in having management find coverage for Nurse (b) (6), (b) (7)(C) Labor Day shift. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 7. Labor Day 2021 was on September 6. On September 8, Nurse (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) to schedule the investigatory interview.

As Nurse (b) (6), (b) (7)(C) was increasing (b) (6), (b) (7)(C) Union and other protected activities, the Employer retaliated against (b) (6), (b) (7)(C) ultimately leading to (b) (6), (b) (7)(C) termination when (b) (6), (b) (7)(C) continued to raise safety concerns on behalf of (b) (6), (b) (7)(C) colleagues.

On February 9, (b) (6), (b) (7)(C) sent the Employer its findings related to the complaint the Union filed, in which Nurse (b) (6), (b) (7)(C) was publicly involved. Two weeks later, the Employer issued (b) (6), (b) (7)(C) verbal warning for late continuing education from December 2020. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 2.

Nurse (b) (6), (b) (7)(C) very active union participation in the Union’s campaign for its 2021 negotiations as well as (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) in the fall of 2021 preceded (b) (6), (b) (7)(C) Final Written Warning on June 15, 2021.

ii. Disparate Treatment

The Union is unaware of any evidence that the Employer has ever discharged an employee because of late continuing education. In fact, the evidence shows, that the Employer does not consistently discipline employees for late CEs. And for the CE at issue, the evidence

shows that Nurse (b) (6), (b) (7)(C) was the sole nurse to receive discipline despite several nurses in (b) (6), (b) (7)(C) unit and in the hospital having failed to timely complete the CE.

The Employer fired Nurse (b) (6), (b) (7)(C) for failing to timely complete a telemetry CE that was due on (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C), the (b) (6), (b) (7)(C) sent notice via GroupMe that eleven nurses missed the (b) (6), (b) (7)(C) deadline to complete the telemetry CE, including Nurse (b) (6), (b) (7)(C) and Nurse (b) (6), (b) (7)(C). The Employer *only* disciplined Nurse (b) (6), (b) (7)(C). Nurse (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) completed (b) (6), (b) (7)(C) telemetry CE on (b) (6), (b) (7)(C) two days after the stated deadline. (b) (6), (b) (7)(C) Aff. 2. While (b) (6), (b) (7)(C) may have been unclear whether (b) (6), (b) (7)(C) completed (b) (6), (b) (7)(C) telemetry on or after the due date, that is likely because the Employer has not enforced disciplines for late CEs consistently and was targeting Nurse (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) union and other protected activities.

Nurse (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) was over two months late in completing the telemetry CE that led to Nurse (b) (6), (b) (7)(C) firing for being a day late. (b) (6), (b) (7)(C) Aff. 2. Nurse (b) (6), (b) (7)(C) received several reminders after the August 2021 due date about the late telemetry CE. Nevertheless, the Employer never disciplined Nurse (b) (6), (b) (7)(C) for the late CE. *Id.* Nurse (b) (6), (b) (7)(C) also testified that (b) (6), (b) (7)(C) currently has several past-due CEs for which (b) (6), (b) (7)(C) has not received any disciplinary actions. *Id.*

Similarly, Nurse (b) (6), (b) (7)(C) testified that the Employer extends deadlines so that nurses can complete their CEs. (b) (6), (b) (7)(C) Aff. 2-3.

iii. Departure from Usual Practice

As detailed above, the Employer has departed from its usual practices in enforcing discipline for late CEs. Nurse (b) (6), (b) (7)(C) testified that before 2021, (b) (6), (b) (7)(C) was regularly late with (b) (6), (b) (7)(C) CEs and had not received disciplinary action. The Employer only began enforcing discipline against Nurse (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) became the (b) (6), (b) (7)(C) of the Union, criticizing RMC and its parent company HCA for its unsafe working conditions related to Covid-19.

Also detailed above, the Employer has moved deadlines for nurses to complete their CEs. Yet it fired Nurse (b) (6), (b) (7)(C) for being a day late on (b) (6), (b) (7)(C) telemetry CE.

The Employer also departed from its progressive-discipline policy. It issued Nurse (b) (6), (b) (7)(C) a verbal warning in February 2021 and then issued (b) (6), (b) (7)(C) a Final Written Warning in (b) (6), (b) (7)(C) 2021 without first issuing (b) (6), (b) (7)(C) a Written Warning, which is the second step in its progressive discipline. Additionally, the Final Written Warning should not have led to a subsequent termination for a late CE. The corrective action stated on the Final Written Warning was “(b) (6), (b) (7)(C) will renew (b) (6), (b) (7)(C) [ACLS] prior to (b) (6), (b) (7)(C) next scheduled shift . . . Failure to comply will lead to additional corrective action, up to and including termination.” There is no dispute that Nurse (b) (6), (b) (7)(C) complied and renewed (b) (6), (b) (7)(C) ACLS before (b) (6), (b) (7)(C) next shift. As such, the Final Written Warning was moot and termination was not warranted for a one-day late CE, especially considering eleven nurses in Nurse (b) (6), (b) (7)(C) unit alone were late with the same exact CE without any coaching or other disciplinary action.

Because of the Employer's disparate treatment and departure from its usual practices, it will not be possible for Respondent to establish under *Wright Line* that it would have taken the same adverse actions against Nurse (b) (6), (b) (7)(C) irrespective of his Union activity for many of the same reasons that inform the prima facie case.

iv. Other Indicia of Unlawful Motives

The Employer's reaction to Nurse (b) (6), (b) (7)(C) union and other protected activities is also indicia of an unlawful motive. When Nurse (b) (6), (b) (7)(C) raised concerns about mixing Covid and non-Covid patients on September 24, (b) (6), (b) (7)(C) manager pulled (b) (6), (b) (7)(C) into a meeting and "seemed kind of panicked and freaked out. . . . (b) (6), (b) (7)(C) told [Nurse (b) (6), (b) (7)(C)] not to say anything on the floor about it." (b) (6), (b) (7)(C), (b) (7)(D) Aff. 7. Similarly, when Nurse (b) (6), (b) (7)(C) raised issues of pay disparities publicly, (b) (6), (b) (7)(C) Employer told (b) (6), (b) (7)(C) not to address the issue publicly and told nurses in the PCU to "mind their manners" on the GroupMe after Nurse (b) (6), (b) (7)(C) raised the pay issue. (b) (6), (b) (7)(C), (b) (7)(D) Aff. 8. The Employer's reaction to Nurse (b) (6), (b) (7)(C) union and other protected activities was to silence (b) (6), (b) (7)(C) which it ultimately did by firing (b) (6), (b) (7)(C).

It also appears that the Employer has fabricated evidence to support its termination of Nurse (b) (6), (b) (7)(C). In response to the Union's information request, requesting disciplines of nurses for similar alleged violations as Nurse (b) (6), (b) (7)(C), the Employer provided nine disciplines, only one of which was signed by the (b) (6), (b) (7)(C) and/or the employee. (b) (6), (b) (7)(C) investigated the matter and spoke with (b) (6), (b) (7)(C) who allegedly received a discipline in (b) (6), (b) (7)(C) 2021 for a late CE. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had never seen the discipline. (b) (6), (b) (7)(C) Aff. 14.

B. Deferral Is Inappropriate Because the CBA Carves Out Discrimination Cases from the Arbitration Clause

Deferral is not appropriate because the labor arbitration is not a forum where the Union can litigate a claim of discrimination or a refusal to bargain by failing to furnish information. Under *Collyer* certain charges must be deferred "if the conduct is cognizable under the grievance procedure, the grievance procedure culminates in final and binding arbitration and the charged party waives all timeliness defenses to the grievance." CHM Part 1 at 10118.1(b). Unlike *Collyer*, the Regional Office "will defer under *Dubo* only if the charging party has initiated, and continues to process a **grievance involving the same issue**, and elects to remain in the grievance procedure." CHM Part 1 at 10118.1(c) (emphasis added).

The grievance-arbitration and the unfair practice charge are not over the "same issue" because the CBA specifically excludes the issue of discrimination from arbitration. Article 24 of the parties' CBA states:

The Hospital . . . will not discriminate or retaliate against any Employee regarding the terms and conditions of employment on the basis of . . . support for or lack of support for the union or other factor protected by federal, state or local laws and ordinances.

Alleged violations of the foregoing may be subject to the grievance procedure, but not arbitration. Nothing in this Article limits the Registered Nurse's ability to pursue a claim in state court, federal court, or any other forum.

CBA at p. 23. While the parties' CBA culminates in final and binding arbitration, it carves out from the arbitration clause claims for discrimination because of union or other protected activities. If the Region defers the instant ULP, neither the Union nor Nurse (b) (6), (b) (7)(C) will have a forum to litigate such a claim. As demonstrated above, there is a strong claim that the Employer discharged Nurse (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) became (b) (6), (b) (7)(C) for NNOC/NNU in 2021. While the Union may be able to present some evidence of disparate treatment, the Employer will likely object to the introduction of evidence that the disparate treatment was *because of* Nurse (b) (6), (b) (7)(C) union and other protected activities.

In a labor-arbitration setting without such an exclusion as present in the parties' CBA, a Union would ordinarily be able to raise discrimination as an affirmative defense. If this matter is deferred and without specific agreement to arbitrate this issue, the Union would be unable to raise such an affirmative defense. Deferral will not further the labor policy supporting labor arbitration because it would significantly undercut the Union's ability to vindicate the rights of its members.

Additionally, GC Memo 21-04, requires mandatory submission to advice on questions involving deferral questions under *United Parcel Service*, 369 NLRB No. 1 (2019), which overturned *Babcock & Wilcox Construction Co.*, 361 NLRB 1127 (2014). Under the *Babcock & Wilcox* standard, the party urging deferral had to demonstrate "(1) the arbitrator was explicitly authorized to decide the ULP issue, (2) the arbitrator was presented with and considered the statutory issue or was prevented from doing so by the party opposing deferral, and (3) Board law reasonably permits the arbitral award, and, instead, returning to the standards of *Spielberg Mfg.*, 112 NLRB 1080 (1955) and *Olin Corp.*, 268 NLRB 573 (1984))." GC Memo 21-04 at 6. In the present matter, the CBA explicitly precludes the arbitrator from deciding the ULP issue. At the very least, this issue must be submitted to Advice.

III. CONCLUSION

The Employer's acts of discharging Nurse (b) (6), (b) (7)(C) for Union and other protected activity, and refusing to provide information necessary and relevant to processing grievances on behalf of Nurse (b) (6), (b) (7)(C), constitute violations of Section 8(a)(1), (3), and (5) of the Act, requiring the Board to invoke its jurisdiction and exercise its expertise. Based on the foregoing evidence, the Union respectfully requests that the Regional Director issue complaint in this

matter. The Union also requests the opportunity to submit any rebuttal evidence to any evidence the Employer has submitted in the Board's investigation.

Respectfully submitted,

NATIONAL NURSES ORGANIZING
COMMITTEE – MISSOURI & KANSAS/NNU
LEGAL DEPARTMENT

/s/ Anthony J. Tucci

Anthony J. Tucci
Legal Counsel

From: [Anthony Tucci](#)
To: [Proctor, Rebecca](#)
Subject: Re: Midwest Division - RMC, LLC, d/b/a Research Medical Center - 14-CA-292528
Date: Monday, April 25, 2022 3:29:10 PM

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Hi, Rebecca. The Employer provided its supplemental response on Friday, and we're now prepared to withdraw the entire charge without prejudice. Let me know if you have any questions.

Thanks,

Anthony

From: Anthony Tucci
Sent: Friday, April 22, 2022 11:58 AM
To: Proctor, Rebecca <Rebecca.Proctor@nrlb.gov>
Subject: Midwest Division - RMC, LLC, d/b/a Research Medical Center - 14-CA-292528

Hi, Rebecca. Just to follow up on our conversation earlier today, the Union intends to withdraw the allegation related to the Nurse (b) (6), (b) (7)(C) termination. I am working with Employer's counsel on non-Board settlement re the RFI allegations. If we are able to reach a non-Board that results in the withdrawal of the RFI allegation, we'd prefer to withdraw the entire charge as opposed to withdrawing it piecemeal.

Let me know if you have any questions or would like to discuss further.

Thanks,

Anthony

--

Anthony J. Tucci
Legal Counsel
CNA/NNOC/NNU
155 Grand Ave.
Oakland, CA 94612
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(pronouns: he/him/his)

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From: Anthony Tucci

Sent: Friday, April 22, 2022 11:58 AM

To: Proctor, Rebecca <Rebecca.Proctor@nrlb.gov>

Subject: Midwest Division - RMC, LLC, d/b/a Research Medical Center - 14-CA-292528

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Let me know if you have any questions or would like to discuss further.

Thanks,

Anthony

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Anthony J. Tucci

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April 26, 2022

Ashley McClellan, CEO
Midwest Division-RMC, LLC d/b/a
Research Medical Center
2316 E Meyer Blvd
Kansas City, MO 64132-1136

Re: Midwest Division - RMC, LLC, d/b/a
Research Medical Center
Case 14-CA-292528

Dear Ms. McClellan:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrea J. Wilkes".

ANDREA J. WILKES
Regional Director

AJW:kec

cc: Anthony J. Tucci, Legal Counsel
National Nurses Organizing Committee-
Missouri & Kansas/National Nurses
United (NNOC-MO/NNU)
155 Grand Ave
Oakland, CA 94612